

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: FEDLOAN STUDENT LOAN
SERVICING LITIGATION

No. 18-md-02833

THIS DOCUMENT RELATES TO:
ALL ACTIONS

HON. C. DARNELL JONES, II

JOINT PROPOSED AGENDA

Pursuant to paragraph 15 of the Court's Order entered on July 25, 2018, Plaintiffs and Defendants Pennsylvania Higher Education Assistance Agency, ("PHEAA"), the United States Department of Education, and Betsy DeVos, in her official capacity as Secretary of the United States Department of Education (collectively, the "United States"), submit this Joint Proposed Agenda for the October 15, 2018 initial pre-trial conference:

- 1. DISCUSSION OF CASE AND CLASS ALLEGATIONS**
- 2. PLAINTIFFS' MOTIONS TO APPOINT LEAD COUNSEL AND ESTABLISH AN EXECUTIVE COMMITTEE**
- 3. PLAINTIFFS' CONSOLIDATED AMENDED COMPLAINT**

Plaintiffs' Position: Plaintiffs propose that their Consolidated Amended Complaint be filed 30 days from the date of the Court's order appointing lead counsel.

Defendants' Position: Defendant PHEAA conditionally consents, but opposes inclusion of plaintiffs whose claims were dismissed prior to consolidation. The United States does not oppose the submission of a Consolidated Amended Complaint.

- 4. RESPONSE TO PLAINTIFFS' CONSOLIDATED AMENDED COMPLAINT**

Defendants' response to the consolidated amended complaint will be due 30 days after the Consolidated Amended Complaint is filed; the opposition to any motion(s) to dismiss will be due 30 days thereafter. Any reply granted with leave of court in accordance with

Paragraph 5 of Your Honor's Policies and Procedures for Civil Cases should be due 15 days after the filing of the opposition.

5. INITIAL DISCLOSURES

The parties agree to exchange their Rule 26(a) disclosures within 45 days of filing of the Consolidated Amended Complaint.

6. DISCOVERY SCHEDULE

Plaintiffs' Position: Plaintiffs propose that general discovery commence pursuant to a schedule to be agreed to following appointment of lead counsel. (See below.) Plaintiffs oppose bifurcated class and merits discovery, and particularly Defendants' proposal that class motions be resolved prior to the initiation of discovery. Plaintiffs' motion for class certification should be set at a time after sufficient discovery is conducted such that the record is fully developed.

Plaintiffs oppose Defendants' proposal to select a limited sampling of representative plaintiffs and putative class members for expedited consideration of class certification.

Defendants' Position: Defendants propose resolution of class and case-dispositive motions prior to the initiation of discovery. Specifically, PHEAA intends to raise federal preemption and the lack of a private cause of action under the Higher Education Act in a motion to dismiss even before the filing of the proposed amended consolidated complaint. Additional dispositive issues will be raised in response to any amended complaint. Fact and expert discovery may be delayed until resolution of these issues.

Defendants further propose that, in the event that discovery commences, the parties mutually select a limited sampling of representative plaintiffs and putative class members for expedited consideration of class certification.

Joint Position: Following the Court's decision regarding case management issues, the parties propose that following the appointment of lead counsel, they meet and confer to discuss a detailed discovery schedule, including deadlines for the service of written discovery, fact depositions and expert discovery.

7. ESI AND GENERAL DISCOVERY PROTOCOL

The parties agree to meet and confer in a good faith effort to negotiate a proposed ESI protocol, as well as an overall discovery protocol (including limitations on the number of written discovery requests, depositions, and third-party preservation subpoenas), to be submitted to the court within 30 days after the appointment of lead counsel.

8. PROTECTIVE ORDER

The parties agree to meet and confer in a good faith effort to negotiate a stipulated protective order and claw-back order under Fed. R. Evid. 502(d) to be submitted to the court within 30 days after the appointment of lead counsel.

9. RESOLUTION OF THE CASE

Settlement discussions have not yet taken place. The parties are open to discussing resolution at the appropriate time but believe that it is premature at this early juncture in the litigation.

10. MAGISTRATE JURISDICTION

The parties do not consent to the jurisdiction of a U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73.

11. SUBSEQUENT CASE MANAGEMENT CONFERENCE

The parties agree that another status conference may be helpful after the appointment of lead counsel and request a second status conference approximately 14 days after the Court appoints lead counsel.

Date: October 5, 2018

Respectfully submitted,

/s/ Laura K. Mummert

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CERTIFICATE OF SERVICE

I, Laura K. Mummert, hereby certify that on October 5, 2018, I filed and served through the Court's ECF system a true and correct copy of the foregoing document. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system and notice of these filings will be sent to these parties by operation of this Court's electronic filing system.

/s/ Laura K. Mummert
Laura K. Mummert